IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7021 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DEVIBEN GAGABHAI

Appearance:

1. Special Civil Application No. 7021 of 2001

MR RV DESAI, AGP, for Petitioner No. 1

MR JT TRIVEDI for Respondent No. 1

MR BJ TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/12/2001

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the State of Gujarat has challenged the judgment and award dated 18-9-2000 passed by the Labour

Court, Junagadh in Reference (LCJ) No. 157 of 1998 by which the Labour Court set aside the order of termination and directed the petitioner - employer to reinstate the respondent in service with 50% backwages and also directed the petitioner to pay the respondent cost of the Reference quantified at Rs.500/-.

2. When this petition came up for hearing on 29-8-2001, this Court issued Rule and directed that the petitioner - State of Gujarat will offer employment to the respondent - workman and the workman will be reinstated in service as per the impugned award of the Labour Court or in the alternative if the workman files necessary affidavit then she will be given the benefit of the provisions of section 17B of the Industrial Disputes Act, 1947. On that day, the learned counsel for the respondent - workman stated that he would not press for backwages at that stage. The petition has now come up for final disposal.

3. Mr RV Desai learned Assistant Government Pleader submits that the respondent was employed in the Forest Department which is not an `industry' as held by the Hon'ble Supreme Court in State of Gujarat vs. PM Parmar 2001 (3) JT 326. The learned AGP further submits that the respondent - workman has already been taken back in employment on 9-10-2001 as per the statement made in letter dated 12-10-2001 of Dy. Conservator of Forests, Junagadh. The learned AGP challenges the direction given by the Labour Court for payment of 50% backwages.

4. On the other hand, Mr JT Trivedi learned counsel for the respondent -workman submits that since the respondent - workman has already been taken back in employment w.e.f. 9-10-2001, the respondent -workman does not press for backwages without prejudice to the rights and contentions of the respondent - workman that the Forest Department is an `industry' within the meaning of the Industrial Disputes Act, 1947.

5. In view of the fact that the respondent - workman has already been taken back in employment on 9-10-2001 and in view of the aforesaid concession coming from the learned counsel for the respondent - workman that in view of the respondent - workman getting back employment, the respondent - workman does not press for 50% backwages as awarded by the Labour Court, this petition is partly allowed and the direction for payment of 50% backwages is required to be set aside. It is clarified that in view of the aforesaid stand taken by the parties, it is not necessary to give any final decision in the matter

regarding the status of the Forest Department - whether it is an industry or not.

6. The award of the Labour Court is accordingly modified and the direction for payment of 50% backwages is quashed and set aside. It is clarified that the judgment given by the Labour Court in the above numbered reference holding the Forest Department to be an `industry' shall not be treated as a binding decision between the parties and it will be open to the Department to contend that it is not an `industry' as and when any such occasion arises in future.

7. The petition accordingly stands disposed of in the aforesaid terms. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)
zgs/-